

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

IN RE:

BRIAN STERLING LAMB
PAMELA GAIL LAMB

Debtors

Case No. 04-52001-RWK
(Chapter 7)

BANK ONE, N.A.

Movant

v.

BRIAN STERLING LAMB
PAMELA GAIL LAMB, et al.

Respondents

Motion No.

NOTICE OF HEARING

Please take notice that Bank One, N.A., by counsel, will argue its Motion for Relief from Automatic Stay on February 24, 2005 at 10:00 am or as soon thereafter as counsel may be heard, in the United States Bankruptcy Court for the Western District of Virginia, Harrisonburg Division, U.S. Courthouse, 116 N. Main Street, Harrisonburg, VA 22802 before the Honorable Judge Ross W. Krumm.

Respectfully submitted,

/s/ Roxanne F. Rosado

L. Darren Goldberg, Bar #36003
James E. Clarke, Bar# 40685
Roxanne F. Rosado, Bar# 51117
Attorneys for the Movant
Draper & Goldberg, P.L.L.C.
803 Sycolin Road, Suite 301
Leesburg, VA 20175
(703) 777-7101

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Hearing was mailed by first class mail, postage-paid, or served electronically this 3 day of February , 2005 to the following parties:

Brian Sterling Lamb
Pamela Gail Lamb
203 Crestleigh Drive
Winchester, VA 22602
Debtors

James A. Drown, Esquire
P.O. Box 444
Winchester, VA 22604
Attorney for the Debtors

John G. Leake, Trustee
P.O. Box 526
Harrisonburg, VA 22803
(Electronically)

/s/ Roxanne F. Rosado
L. Darren Goldberg, Esquire
James E. Clarke, Esquire
Roxanne F. Rosado, Esquire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

IN RE:

BRIAN STERLING LAMB
PAMELA GAIL LAMB

Debtors

Case No. 04-52001-RWK
(Chapter 7)

BANK ONE, N.A.
N54 W13600 WOODALE
DRIVE MAIL STATION WI 1-4033
MENOMONEE FALLS, WI 53051

Movant

v.

BRIAN STERLING LAMB
PAMELA GAIL LAMB
203 CRESTLEIGH DRIVE
WINCHESTER, VA 22602
(Debtors)

JOHN G. LEAKE
P.O. BOX 526
HARRISONBURG, VA 22803
(Trustee)

Respondents

Motion No.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Bank One, N.A. ("Bank One"), by undersigned counsel, respectfully moves this

Honorable Court to terminate the Automatic Stay and, as grounds therefore, states as follows:

L. Darren Goldberg #36003
James E. Clarke, Bar #40685
Roxanne F. Rosado, Bar #51117
Draper & Goldberg, P.L.L.C.
803 Sycolin Road, Suite 301
Leesburg, VA 20175
(703) 777-7101

1. This proceeding seeking relief under Section 362 of the U.S. Bankruptcy Code is a contested matter within the meaning of 9014 and 4001 of the Federal Rules of Bankruptcy Procedure, and this court has jurisdiction over this matter pursuant to 28 U.S.C. Section 157.

2. On December 20, 2004, the above named debtors, Brian Sterling Lamb and Pamela Gail Lamb (“Debtors”), filed in this court a Petition under Chapter 7 of the United States Bankruptcy Code. John G. Leake was appointed Chapter 7 Trustee.

3. On or about December 23, 2003, the Debtors executed and delivered to Bank One, N.A. a Note in the amount of ONE HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED TEN and 85/100 dollars (\$164,810.85), plus interest at the rate of 6.76% per annum, attorneys’ fees, costs and late charges to be paid over thirty (30) years. A copy of the Note is attached as Exhibit “A” and incorporated herein.

4. To secure the repayment of the sums due under the Note, the Debtors executed and delivered to Bank One, N.A. a Deed of Trust dated December 23, 2003 encumbering the real property (“Property”) described as:

LOT 1, WELLINGTON PLACE SUBDIVISION, ACCORDING TO PLAT RECORDED NOVEMBER 5, 1996 AT RECEPTION NO. 96079930, BEING A PORTION OF TRACT 48 WELLINGTON PLACE, TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO;

which has the address of 3802 Hamilton Avenue, Wellington, Colorado 80546. A copy of the Deed of Trust is attached as Exhibit “B” and incorporated herein.

5. As of January 24, 2005, the Debtors owe an unpaid principal balance of \$163,771.29 under the Note, plus additional accruing interest, late charges, attorneys’ fees and costs.

6. The Debtors failed to make the contractual payments due under the Note for 4 months and are in arrears for a total amount of \$4,285.16, plus additional late charges, attorneys' fees and costs.

7. The Debtors are in default under the Note.

8. The Debtors have not and cannot offer Bank One any adequate protection of its interest in the Property, and Bank One avers it is not adequately protected.

9. The Property is not necessary for an effective reorganization, since the Debtors have little or no equity in the Property.

10. Cause exists to terminate the Automatic Stay.

WHEREFORE, the premises considered, Bank One respectfully requests that this Court enter an Order terminating the Automatic Stay so Bank One may exercise its legal rights under applicable law as to the Property, including but not limited to foreclosure against the Property under the Deed of Trust, and for such other and further relief as this court deems just and proper.

Respectfully submitted,

/s/ Roxanne F. Rosado

L. Darren Goldberg, Bar #36003
James E. Clarke, Bar# 40685
Roxanne F. Rosado, Bar# 51117
Draper & Goldberg, P.L.L.C.
803 Sycolin Road, Suite 301
Leesburg, VA 20175
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

IN RE: BRIAN STERLING LAMB PAMELA GAIL LAMB Debtors	Case No. 04-52001-RWK (Chapter 7)
BANK ONE, N.A. Movant v. BRIAN STERLING LAMB PAMELA GAIL LAMB, et al. Respondents	Motion No. _____

ORDER TERMINATING AUTOMATIC STAY

UPON CONSIDERATION of the Motion for Relief from Automatic Stay (“Motion”) filed by Bank One, N.A. (“Bank One”), and any response thereto, and good cause having been shown, it is hereby;

ORDERED, that the Motion be, and the same is hereby GRANTED; and it is further

ORDERED, that the Automatic Stay is terminated allowing Bank One to exercise its rights under applicable law against the Debtors’ Property described as:

LOT 1, WELLINGTON PLACE SUBDIVISION, ACCORDING TO PLAT RECORDED NOVEMBER 5, 1996 AT RECEPTION NO. 96079930, BEING A PORTION OF TRACT 48 WELLINGTON PLACE, TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO;

L. Darren Goldberg #36003
James E. Clarke, Bar #40685
Roxanne F. Rosado, Bar #51117
Draper & Goldberg, P.L.L.C.
803 Sycolin Road, Suite 301
Leesburg, VA 20175
(703) 777-7101

which has the address of 3802 Hamilton Avenue, Wellington, Colorado 80546 ("Property"), including, but not limited to foreclosure against the Property under the Deed of Trust.

Date: _____

BY THE COURT:

Ross W. Krumm
Chief Judge

I ASK FOR THIS:

/s/ Roxanne F. Rosado
L. Darren Goldberg, Bar #36003
James E. Clarke, Bar# 40685
Roxanne F. Rosado, Bar# 51117
Draper & Goldberg, P.L.L.C.
803 Sycolin Road, Suite 301
Leesburg, VA 20175
(703) 777- 7101

SEEN:

James A. Drown, Esquire
Bar No. _____
P.O. Box 444
Winchester, VA 22604
Attorney for the Debtors

John G. Leake, Trustee
P.O. Box 526
Harrisonburg, VA 22803

Copies to:

L. Darren Goldberg, Esquire
James E. Clarke, Esquire
Roxanne F. Rosado, Esquire
Draper & Goldberg, P.L.L.C.
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Attorney for the Debtors

John G. Leake, Trustee
P.O. Box 526
Harrisonburg, VA 22803

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion for Relief from Automatic Stay and Proposed Order were mailed by first class mail, postage-paid, or served electronically this ___3___ day of ___February___, 2005 to the following parties:

Brian Sterling Lamb
Pamela Gail Lamb
203 Crestleigh Drive
Winchester, VA 22602
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